

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PATRICIA MARTINEZ,

Plaintiff,

v.

No. CIV 09-0281 JB/LFG

MICHAEL MARTINEZ,
LYNDA LATTA,
ELIZABETH WHITEFIELD,
individually and in her official
capacity, PAUL WIEST, and
JEAN SMITH,

Defendants.

MEMORANDUM OPINION AND ORDER

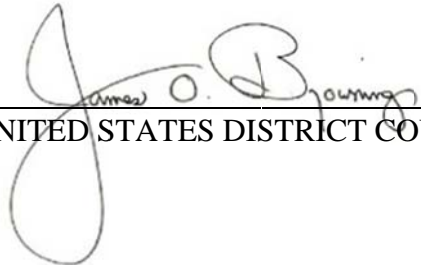
THIS MATTER comes before the Court on the Plaintiff's Motion to Vacate AM Doc. 321 -- Portion of Order Regarding Abuse of Process Count 1 Rulings, filed July 5, 2013 (Doc. 341)("Motion"). The primary issue is whether the Court violated Plaintiff Patricia Martinez' right to a jury trial guaranteed by the Seventh Amendment to the United States Constitution when it granted summary judgment on some of P. Martinez' claims. Because the Court determined that there was no genuine of issue material facts related to the dismissed claims, the Court will deny the motion to vacate.

ANALYSIS

P. Martinez' argument appears to assume that the Court cannot grant a motion for summary judgment when she has demanded a jury. See Motion at 1-4. P. Martinez only has a right to a jury trial if there are factual issues for the jury to decide; the Court decides legal issues. For the dismissed claims, the Court determined that there were no genuine issues of material facts. See Amended Memorandum Opinion and Order Adopting Magistrate Judge's Report and

Recommendation in Part at 45-82, filed June 3, 2013 (Doc. 321). On the remaining claims, where there are remaining issues of fact, P. Martinez gets her jury trial on July 15, 2013 at 9:00 a.m.

IT IS ORDERED that the Motion to Vacate AM Doc. 321 -- Portion of Order Regarding Abuse of Process Count 1 Rulings, filed July 5, 2013 (Doc. 341) is denied.


UNITED STATES DISTRICT COURT

Parties and Counsel:

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Plaintiff pro se

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